

ORDINANCE NO. 08-89

ORDINANCE GRANTING A SPECIAL USE PERMIT (SUP) TO ALLOW AN ADULT DAY-CARE FACILITY ON PROPERTY ZONED M-1 (INDUSTRIAL DISTRICT) AND GRANTING A VARIANCE TO ALLOW 6 PARKING SPACES, WHERE 22 PARKING SPACES ARE REQUIRED, FOR THE USE OF AN ADULT DAY-CARE FACILITY, CONTRA TO HIALEAH CODE §98-2189(8). **PROPERTY LOCATED AT 345-355 WEST 78 ROAD, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of September 10, 2008 recommended approval of this ordinance; and

WHEREAS, the Petitioner proffers to a declaration of restrictive covenants limiting the number of adults receiving services at the facility to the allowable employee-patient ratio, as established by the Florida Agency for Health Care Administration, for a maximum number of three employees, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The below-described property is hereby granted a special use permit (SUP) to allow an adult day-care facility on property zoned M-1 (Industrial District) and is hereby granted a variance permit, ancillary to the special use as an adult day-care facility, to allow 6 parking spaces, where 22 parking spaces are required, contra to Hialeah Code §§ 98-2189(8), which provides in pertinent part: "*Day care centers, child care facilities, kindergarten and preelementary schools.* One parking space for each

400 square feet of gross floor area.” The property is located at 345-355 West 78 Road, Hialeah, Miami-Dade County, Florida and legally described as follows:

TRACT B, OF WENDY’S REED ROAD TRACT,
ACCORDING TO THE PLAT THEREOF, AS
RECORDED IN PLAT BOOK 163, PAGE 55, OF THE
PUBLIC RECORDS OF MIAMI-DADE COUNTY,
FLORIDA.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Additional Penalties upon Violation of the Conditions of Use and/or Declaration of Restrictive Covenants.

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, will cause a revocation of the Special Use Permit and of the city occupational license issued in connection herewith and the property shall revert to the zoning classification without the benefit of the special use and associated variance.

Section 6: Severability Clause.

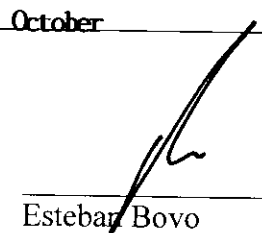
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 28th day of October, 2008.

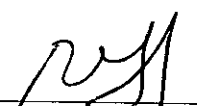
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



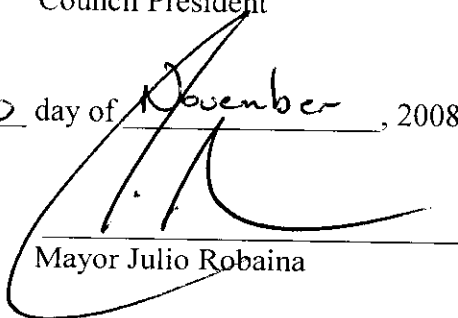
Esteban Bovo
Council President

Attest:

Approved on this 3 day of November, 2008.



Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".



CFN 2008R0911978
OR BK 26644 Pgs 4003 - 4004; (2pgs)
RECORDED 11/10/2008 08:06:49
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and return to:
City of Hialeah, Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

DECLARATION OF RESTRICTIVE COVENANTS

I, Osmary Reguera, as a duly authorized officer on behalf of LA PERLA CONTRACTORS, INC., a Florida corporation, being the owner of lands described herein:

Tract B, of WENDYS REED ROAD TRACT AMENDED, according to the Plat thereof, as recorded in Plat Book 163, Page 55, of the Public Records of Miami-Dade County, Florida.

The street property address is 345-355 West 78 Road; Hialeah, Florida 33014. The folio number is 04-2130-038-0020

make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. The premises, being legally described above, shall be utilized to operate an adult day-care facility licensed by the Florida Agency for Health Care Administration. The undersigned covenants to restrict parking so that no more than 3 parking spaces shall be used at any time by personnel staffing.
2. As a means of enforcement for any violations of these restrictions, the undersigned consents to the revocation of the special use permit and City business tax receipt to operate the adult day-care facility. Thereafter, the premises shall only be used pursuant to the applicable regulations of the underlying zoning classification.
3. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
4. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

IN WITNESS WHEREOF, We have hereunto set out hands and seals at

Miami Lakes, Florida, this23 day of Sept 2008.

(location)

Attest:

Name of Corporation: LA PERLA CONTRACTORS, INC.Secretary:
Typed/Printed NameSigned, sealed and delivered in the
presence of:

By:

President

Osmary Reguera
Typed/Printed Name

Witness

Typed/Printed Name Bonnie Heffernan

Witness

Typed/Printed Name James C. Varquez

Corporate Seal

This document was prepared by:

Name

Street

City

State

Zip Code

Signature of Notary Public

Bonnie Heffernan
Name of notary typed, printed, or stamped
Commission Number: